

REMARKS

Applicant thanks Examiner Randall for his careful review of the pending claims. In this Amendment and Response, Applicant has amended claim 1, 10, 20 and 22. Claim 9 has been canceled and re-written as new claim 30. Thus, claims 1, 10-11, 19-25 and 27-30 remain pending in this application.

For at least the following reasons, the rejections of all pending claims should be withdrawn and the claims should be passed to issue. While this paper is believed to completely address all pending rejections, Applicant reserves the right to set forth other reasons supporting the patentability of the claims, including reasons supporting the separate patentability of dependent claims not explicitly addressed herein, in future papers.¹ Further, for any instances in which the Examiner took Official Notice in the Office Action, Applicants expressly do not acquiesce to the taking of Official Notice, and respectfully request that the Examiner provide an affidavit to support the Official Notice taken in the next Office Action, as required by 37 CFR 1.104(d)(2) and MPEP § 2144.03.

I. Rejection of Claim 10 Under 35 U.S.C. § 112, ¶ 2

The Examiner rejected claim 10 under 35 U.S.C. § 112, ¶ 2 for allegedly being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention, finding that the limitation “said bag retaining element” has insufficient antecedent basis. Applicants have amended claim 10 to address the Examiner’s rejection. Withdrawal of the rejection is therefore respectfully requested.

¹ As Applicants’ remarks with respect to the Examiner’s rejections are sufficient to overcome any rejections, Applicants’ silence as to assertions by the Examiner in the Office Action or certain requirements that may be applicable to such rejections (e.g., whether a reference constitutes prior art, motivation to combine references, assertions as to dependent claims, etc.) is not a concession by Applicants that such assertions are accurate or such requirements have been met, and Applicants reserve the right to analyze and dispute such assertions/requirements in the future.

II. Rejection of Claims 1, 10, 19, 20-23 and 28 Under 35 U.S.C. § 103(a) Based Lundberg, Schlumpf and Brenner

The Examiner rejected claims 1, 10, 19, 20-23 and 28 under 35 U.S.C. § 103(a) as allegedly being unpatentable over Adolf Lundberg (U.S. Patent No. 1,312,449, hereinafter Lundberg) in view of Schulumpf and Brenner. The rejection is respectfully traversed.

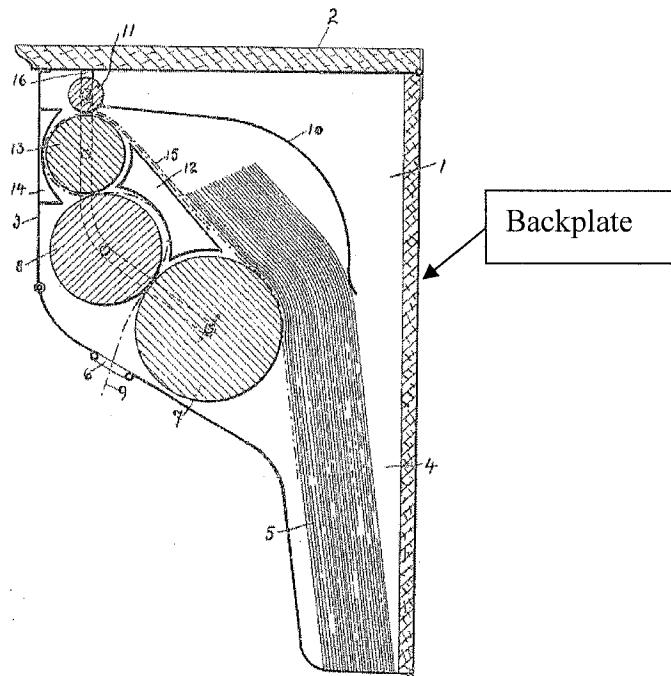
A. Independent Claim 1

Claim 1 positively recites a device for dispensing a bag from a stack of bags, the device comprising: “a plate vertically mounted on a frame, said plate defining a vertically oriented planar bag-supporting surface and an opposite vertically oriented planar surface; a rotatable shaft mounted on top of said frame; . . . wherein the stack of bags is held against said vertically oriented planar bag-supporting surface, and when said rotatable shaft rotates, said nearmost bag is shifted over said at least one roller and descends down along said vertically oriented opposite planar surface side of said plate.”

The Office Action states that “Lundberg teaches a plate (12) vertically mounted on a frame (at 1), said plate (12) defining a planar supporting surface and an opposite planar surface; a rotatable shaft mounted on top of said frame . . .” and that Lundberg discloses that “the stack of products is held against said planar bag-supporting surface and when said rotatable shaft rotates, said nearmost product is shifted over said at least one roller and descends down along opposite planar surface side of said plate (12).” Applicants respectfully disagree.

Referring to the drawing of Lundberg reproduced below, it may be seen that Lundberg teaches a box 1, that is defined by lid 2 and 3, as well as a backplate, labeled below. Within box 1, is a cover 10 and a “removeable guiding piece 12”. As may be seen in the Figure depicted below, guiding piece 12 is not “a plate *vertically* mounted on a frame” as required by claim 1. Indeed, guiding piece 12 is disposed at an angle with respect to the frame. However, in the interest of advancing prosecution in his matter, Applicants have further amended claim 1 to clarify that the claimed plate defines a *vertically oriented planar bag-supporting surface* and an opposite *vertically oriented planar surface*. Support for this amendment may be found in at least FIGS. 1-2. Lundberg actually teaches away from these features in that the guiding piece 12 includes a *curved* surface (which is also disposed at an angle with respect to the frame), that has a shape that generally

conforms to the shape of roller 8 so as to direct sheet 9 between rollers 8 and 9. During operation of the device in Lundberg, sheet 9 does not “descend down along said vertically oriented opposite planar surface side of said plate,” as required in claim 1, because the surface opposite of the bag supporting surface shown in Lundberg is curved.



Nor does Schlumpf and Brenner make up for the deficiencies of Lundberg. Indeed, both Schlumpf and Brenner actually teach away from the device recited in claim 1. More specifically, Schulmpf is directed to “an automatic vending arrangement in which newspapers are *horizontally* supported on a support table.” *Abstract* (emphasis added). Thus, Schulmpf does not teach, suggest or disclose “a plate vertically mounted on a frame, said plate defining a vertically oriented planar bag-supporting surface and an opposite vertically oriented planar surface; a rotatable shaft mounted on top of said frame; . . . wherein the stack of bags is held against said vertically oriented planar bag-supporting surface, and when said rotatable shaft rotates, said nearest bag is shifted over said at least one roller and descends down along said vertically oriented opposite planar surface side of said plate” as required by claim 1.

Similarly, Brenner also teaches “a bottom wall 25 which is preferably disposed at an angle of ninety degrees to the back wall 23.” Further, “there is provided in the bottom wall [25] a hump 25A disposed intermediate the front and rear edges and extending transversely thereof.” Col. 3, lines 51-62. As may be seen in FIG. 1, “the bags 10 to be dispensed are required to be merely stacked one on the other within the enclosure, and the shape of the bottom wall 25 is such that the column of bags stacked therein will assume a concave arrangement.” Col. 3, line 71-Col. 4, line 2. Accordingly, Brenner fails to teach, suggest or disclose “a plate vertically mounted on a frame, said plate defining a vertically oriented planar bag-supporting surface and an opposite vertically oriented planar surface; a rotatable shaft mounted on top of said frame; . . . wherein the stack of bags is held against said vertically oriented planar bag-supporting surface, and when said rotatable shaft rotates, said nearest bag is shifted over said at least one roller and descends down along said vertically oriented opposite planar surface side of said plate” as required by claim 1.

Therefore, claim 1 patentably defines over the Lundberg/Schlumpf/Brenner combination. Withdrawal of the rejection is respectfully requested.

B. Dependent Claims 10 and 19

Claims 10 and 19 include additional limitations that are separately patentable over the cited prior art. However, these claims are also patentable merely by virtue of their dependency upon claim 1. Thus, withdrawal of the rejection with respect to claims 10 and 19 is also respectfully requested.

C. Independent Claim 20

Independent claim 20 is of a different scope than claim 1. However, at least for reasons similar to those discussed above with respect to the patentability of claim 1, claim 20 is also patentable over the cited combination of Lundberg, Schlumpf, and Brenner. Withdrawal of the rejection is therefore respectfully requested.

D. Dependent Claims 21-23 and 28

Dependent claims 21-23 and 28 include additional limitations that are separately patentable over the cited prior art. However, these claims are also patentable merely by virtue of their dependency upon claim 20. Thus, withdrawal of the rejection with respect to claims 21-23 and 28 is also respectfully requested.

III. Rejection of Claim 11 Under 35 U.S.C. § 103(a) Based on Lundberg, Schlumpf, Brenner, and Vanjo

The Examiner rejected claim 11 under 35 U.S.C. § 103(a) as allegedly being unpatentable over Lundberg in view of Schlumpf and Brenner and further in view of Benno Vanjo (U.S. Patent No. 4,043,484 – herein after Vanjo). The rejection is also respectfully traversed.

Claim 11 depends indirectly from claim 1. Thus, the arguments presented above in connection with the Lundberg/Schumpf/Brenner combination are equally applicable here. Nor does Vanjo make up for the deficiencies of the Lundberg/Schumpf/Brenner combination. Indeed, in Vanjo, a newspaper 24 is lifted up by inclined needles 45,46 until a lower edge of the newspaper 24 swings forward over a ledge 27 of an inclined sliding track 26. No where does Vanjo teach, suggest, or disclose “a plate vertically mounted on a frame, said plate defining a vertically oriented planar bag-supporting surface and an opposite vertically oriented planar surface; a rotatable shaft mounted on top of said frame; . . . wherein the stack of bags is held against said vertically oriented planar bag-supporting surface, and when said rotatable shaft rotates, said nearmost bag is shifted over said at least one roller and descends down along said vertically oriented opposite planar surface side of said plate” as required by claim 1.

Therefore, claim 11 patentably defines over the Lundberg/Schlumpf/Brenner/Vanjo combination. Withdrawal of the rejection is respectfully requested.

IV. Rejection of Claims 24 and 25 Under 35 U.S.C. § 103(a) Based on Lundberg, Schlumpf, Brenner, and Coleman

The Examiner rejected claims 24 and 25 under 35 U.S.C. § 103(a) as allegedly being unpatentable over Lundberg in view of Schlumpf and Brenner and further in view of Coleman. The rejection is also respectfully traversed.

Claims 24-25 depend directly from claim 20. Thus, the arguments presented above in connection with the Lundberg/Schumpf/Brenner combination are equally applicable here. Nor does Coleman make up for the deficiencies of the Lundberg/Schumpf/Brenner combination. Indeed, Coleman teaches a napkin dispenser that includes a roller 30 and a follower 38. The napkins are

positioned between the roller 30 and the follower. During operation, a free end of the roller pin is manually turned, which rotates roller 30. Protrusions on the roller 30 engage the napkin and advances up through an opening of the housing. Thus, Coleman fails to teach, suggest or disclose “dispensing one bag from said stack of bags nearmost said vertically oriented planar bag-supporting surface to said opposite vertically oriented planar surface of said plate by rotating said rotatable shaft so as to shift said nearmost one bag over said at least one roller such that said nearmost one bag descends down along said opposite vertically oriented planar surface,” as required by claim 20.

Therefore, claims 24-25 patentably define over the Lundberg/Schlumpf/Brenner/Coleman combination. Withdrawal of the rejection is respectfully requested.

V. Allowable Subject Matter

The Applicants thank the Examiner for the indication of allowable subject matter for claims 9 and 29. As suggested by the Examiner, Applicants have rewritten claim 9 in independent form, including all of the limitations of the base claim.

While not addressed in the office action, claim 27 was previously amended to depend from claim 29, which has been allowed. Accordingly, it is believed that claim 27 is also allowable over the cited art.

CONCLUSION

In view of the above amendments and remarks it is respectfully submitted that the claims are in condition for allowance. Re-examination and allowance are, therefore, respectfully solicited. In the event the Examiner deems that outstanding issues remain, he is respectfully requested to telephone the undersigned attorney in an effort to resolve such issues.

Any fee due with this response is identified in an accompanying transmittal. However, if any additional fees are due, please charge our Deposit Account No. 18-0013, under Order No. 66599-0005 from which the undersigned is authorized to draw. To the extent necessary, a petition for extension of time under 37 C.F.R. §1.136 is hereby made, the fee for which should also be charged to this Deposit Account.

Application No. 10/580,289
Amendment dated January 7, 2011
Reply to Office Action of July 7, 2010

Docket No.: 66599-0005

Dated: January 7, 2011

Respectfully submitted,

Electronic signature: /Kristin L. Murphy/
Kristin L. Murphy
Registration No.: 41,212
RADER, FISHMAN & GRAUER PLLC
Correspondence Customer Number: 10291
Attorney for Applicant

R0804805.DOC